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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/651,679	08/29/2003	Kiyono Ikenaka	5341-16	9312
27799	7590	10/03/2007	EXAMINER	
COHEN, PONTANI, LIEBERMAN & PAVANE 551 FIFTH AVENUE SUITE 1210 NEW YORK, NY 10176				GOMA, TAWFIK A
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/651,679	IKENAKA ET AL.
	Examiner	Art Unit
	Tawfik Goma	2627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 July 2007.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,11,14-44,51-98 and 100-123 is/are pending in the application.
- 4a) Of the above claim(s) 11,15-44,51-98,100,101,107-111,113 and 119-122 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1, 14, 102-106, 111- 112, 114-118 and 123 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

This action is in response to the election filed on 7/09/2007.

### *Election/Restrictions*

Applicant's election without traverse of Sub-Species 6 in the reply filed on 7/09/2007 is acknowledged.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 102, 103, 114 and 115 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant points to figure 19 of the specification for support of the claims, but figure 19 and its disclosure only shows a relationship between a focus beam position and an NA, and does not disclose or teach a function with respect to spherical aberration. One of ordinary skill in the art could not make and/or use the invention without undue experimentation regarding the measurement of the spherical aberration component of an unfocused beam with respect to Numerical Aperture in order to find the NA where the spherical aberration becomes discontinuous.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 14, 102, 103, 112, 114 and 115 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shiono et al (US 6834036) in view of Arai et al (US 6870805).

Regarding claims 1 and 112, Shiono discloses an optical pickup apparatus, comprising: a first light source to emit a light flux of a wavelength  $\lambda_1$  (col. 25 lines 56-63) for conducting recording and/or reproducing information for a first optical information recording medium having a protective substrate having a thickness  $t_1$  (col. 26 lines 6-15); a second light source to emit a light flux of a wavelength  $\lambda_2$  ( $\lambda_1 < \lambda_2$ ) (col. 26 lines 2-7,  $\lambda_3$ ) for conducting recording and/or reproducing information for a second optical information recording medium having a protective substrate having a thickness  $t_2$  ( $t_1 \geq t_2$ ) (col. 26 lines 4-7); a third light source to emit a light flux of a wavelength  $\lambda_3$  ( $\lambda_2 < \lambda_3$ ) (col. 25 lines 64-67) for conducting recording and/or reproducing information for a third optical information recording medium having a protective substrate having a thickness  $t_3$  ( $t_2 < t_3$ ) (col. 26 lines 1-2); an objective optical element into which an infinite parallel light flux comes when recording and/or reproducing information is conducted for the first, second and third optical information recording mediums (col. 6 lines 45-49); wherein the objective optical element comprises a first diffractive structure (19a fig. 8 and fig. 9); wherein a converged-light

spot is formed on the first optical information recording medium with m-th order (m is a natural number) diffracted-light ray of the wavelength  $\lambda_1$  generated by the first diffractive structure (col. 26 lines 15-23), a converged-light spot is formed on the second optical information recording medium with n-th order (n is a natural number) diffracted-light ray of the wavelength  $\lambda_2$  generated by the first diffractive structure (col. 26 lines 27-31), and a converged-light spot is formed on the third optical information recording medium with k-th order (k is a natural number) diffracted-light ray of the wavelength  $\lambda_3$  generated by the first diffractive structure (col. 26 lines 23-27), and wherein one of m, n and k is different from one of other two numbers (col. 26 lines 15-31).

Further regarding claims 1 and 112, Shiono fails to disclose wherein the light flux of the wavelength  $\lambda_3$  which has passed an area of the objective optical element which is out of an area within NA3 becomes a flare, NA3 being a numerical aperture for the converged light spot formed on the third optical information recording medium with the light flux of the wavelength  $\lambda_3$ . In the same field of endeavor, Arai discloses wherein light that passes outside of the NA3 becomes a flare (col. 44 lines 59-67 through col. 45 lines 1-22). It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to have the light outside of NA3 be a flare. The rationale is as follows: One of ordinary skill in the art would have been motivated to have the light outside the NA3 be a flare in order to have only a light of wavelength  $\lambda_3$  which corresponds to NA3 used for recording of the information and to eliminate interference of other wavelengths.

Regarding claim 14, Shiono further discloses an optical correcting structure to conduct temperature compensation and chromatic aberration compensation (col. 31 lines 36-54).

Regarding claims 102, 103, 114 and 115, Shiono discloses wherein the converged spot is formed on the third optical information recording medium (col. 26 lines 8-33).

Arai discloses wherein the spherical aberration is discontinuous at NA3 (col. 44 lines 59-67 through col. 45 lines 1-22). It would have been obvious to have the spherical aberration be discontinuous at NA3. The rationale follows as in claims 1 and 112 above.

Regarding claims 104 and 116, Shiono further discloses wherein the first diffractive structure comprises a plurality of diffracting ring-shaped zones representing a serrated discontinuous surface (fig. 9), and at least one of the diffracting ring shaped zone comprises optical path difference furnishing structure (fig. 8 and col. 20 lines 22-39).

Claims 105, 106, 117 and 118 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shiono et al (US 6834036) in view of Arai et al (US 6870805) and further in view of Takeuchi et al (US 6807019).

Regarding claims 105, 106, 117 and 118, Shiono in view of Arai fail to disclose wherein (m, n, k) is (2,1,1), (3,2,2), (5,3,2) or (10,6,5). In the same field of endeavor, Takeuchi discloses using (3,2,2) as the orders of light (col. 9 lines 1-12). It would have been obvious to use the orders disclosed by Takeuchi. The rationale is as follows: One of ordinary skill in the art at the time of the applicant's invention would have been motivated to use the orders of light disclosed by Takeuchi in order to avoid interference

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between the lights and to achieve a high diffraction efficiency using a single diffractive element.

Further regarding claims 106 and 118, Shiono fails to disclose wherein  $\lambda_1$  is between 390-420 nm,  $\lambda_2$  is between 630-680 nm and  $\lambda_3$  is between 750-800 nm. In the same field of endeavor, Takeuchi discloses the wavelengths claims (Table 8, col. 8). It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to use the wavelengths of Takeuchi. The rationale is as follows: One of ordinary skill in the art would have been motivated to use the wavelengths in order to have an apparatus that is compatible with CD's, DVD's and HD-DVD's.

Claims 111 and 123 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shiono et al (US 6834036) in view of Arai et al (US 6879805), and further in view of Maruyama (US 6594222).

Regarding claims 111 and 123, Shiono in view of Arai fail to disclose wherein the objective optical element comprises a different diffractive structure which is farther from the optical axis of the objective optical element than the first diffractive structure and wherein the diffractive order number of the light flux of the wavelength  $\lambda_3$  having passed the different diffractive structure of the diffractive structure is different from the diffraction order number of the light flux of the wavelength  $\lambda_3$  having passed the first diffractive structure. In the same field of endeavor, Maruyama discloses providing an objective element with first and second diffractive structures that are different distances from the optical axis (fig. 3a) and wherein the orders of light having passed the first diffractive structure are different than the other diffractive structure (col. 11 lines 25-54). It would have been obvious to one of ordinary skill in the art to use the diffractive

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structure of the lens disclosed by Maruyama. The rationale is as follows: One of ordinary skill in the art would have been motivated to use the diffractive structure in Maruyama in order to optimize an optical path difference function (see Maruyama col. 10 lines 30-41).

***Response to Arguments***

Applicant's arguments with respect to claims 1, 14, 102-16, 111, 112, 114-118 and 123 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tawfik Goma whose telephone number is (571) 272-4206. The examiner can normally be reached on 8:30 am - 5:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Korzuch can be reached on (571) 272-7589. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tawfik Goma/  
9/18/2007

/William Korzuch/  
SPE, Art Unit 2627